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FILED

NO. 97 1255 DEC 11 1997

OFFICE OF THE CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1997

STUART H. SMITH, JR.
Petitioner

VERSUS

UNITED STATES OF AMERICA
Respondent

ON PETITION FOR WRIT OF CERTIORARI FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

SUPPLEMENTAL APPENDIX

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APPENDIX D

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STUART H. SMITH, JR.	CIVIL ACTION
VERSUS	NO. 95-1950
UNITED STATES OF AMERICA	SECTION: "I" (1)

FILED
DEC 4 '96

ORDER AND REASONS

This suit arises out of the October 3, 1992 allision between the S/S STONEWALL JACKSON and the Pauline Street Wharf in New Orleans, Louisiana. Plaintiff Stuart H. Smith, Jr. filed this complaint under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, on June 19, 1995 seeking the United States Coast Guard's investigative files from its investigation of the allision. Smith was employed by Waterman Steamship Corporation as Third Officer aboard the S/S STONEWALL JACKSON at the time of the allision, but was terminated the day after for failing to properly carry out his assigned duties in connection with the incident.

In July, 1993, Smith filed a complaint for wrongful discharge against Waterman. *See Smith v. Waterman Steam*

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PLAINTIFF'S EXHIBIT
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ship Corp., No. 93-2307 (E.D.La. Section "I"). That suit was dismissed by order entered January 6, 1994, finding that Smith was not wrongfully terminated because he was employed-at-will. *Id.*

Smith alleges in the present suit that his ability to prosecute his claim in the employment suit was prejudiced by the Coast Guard's delay in complying with his FOIA request for documents relative to the investigation of the allision. Smith seeks an order finding the United States "liable," an order compelling production of the entire investigative file on the allision, and attorney fees.

Before the court are cross-motions for summary judgment. The defendant United States seeks summary judgment on the ground that the Coast Guard conducted a proper search for the requested documents and in fact, has now produced all requested documents, thus satisfying its obligations under FOIA. Smith seeks summary judgment on the ground that the Coast Guard has not conducted a reasonable search for the documents, citing a three-year delay in production. For the reasons stated below, the United States's motion for summary judgment is denied; and the plaintiff's motion for summary judgment is granted in part.

I. BACKGROUND

Immediately after the allision on October 3, 1992, an investigator with the Coast Guard Marine Safety Office in New Orleans (MSNO) interviewed witnesses, obtained signed statements, and copied logs, bell books and casualty reports.

On October 8, 1992, Smith made a written request to

the "officer in charge, Marine Inspection, United States Coast Guard" in New Orleans for copies of "all investigative material, including statements." On October 13, 1992, the MSONO mailed a notice stating that Smith's request was forwarded to the Commandant of the Coast Guard at headquarters because that was where the records requested were held.

The Coast Guard completed its investigation of the allision on January 26, 1993.

On April 15, 1993, M. E. Schremp, Chief, Systems Support Branch of the United States Coast Guard Headquarters, responded to the request. She produced only a computer printout of investigative information which had been entered into the Coast Guard's computer file known as the Marine Safety Investigation System (MSIS). The computer data consisted of capsuled information from the incident. The computer data included the names of witnesses, but did not provide the substance of their statements. At that point, Smith was not provided with copies of witness statements or any other material used to generate the computer file.

Over the course of the next several months, Smith made several further requests to headquarters for specific document and information related to the investigation of the allision, and repeatedly expressed his dissatisfaction with the Coast Guard's production. A chronology of the correspondence and events is summarized below.

On June 6 and 10, 1993, Schremp informed Smith that the Coast Guard had "undertaken additional searches of our Marine Safety Information System and associated files," and

had "determined that as of this date, there is no additional information in regard to this incident."

Rebuffed by headquarters, Smith wrote to the MSONO on June 17, 1993, asking for all investigative material believed to exist and particular witness statements.

On July 9, 1993, the MSONO responded to Smith's request with a letter stating that "copies of the requested records are attached." Smith acknowledges receipt of the letter, but contends that no documents were attached.

By letter dated June 25, 1993, Smith appealed the Coast Guard's response to his FOIA request. He stated that the Coast Guard response was insufficient baecause he did not receive copies of particular statements which he knew to exist — those of Jerome J. Dorman, J. Kelly Duncan, an unnamed witness on the wharf, and the pilot Alphonso Ajubita.

In July, 1993, Smith filed his employment lawsuit against Waterman.

On July 14, 1993, Smith reiterated his request to the MSONO for the statements of the particular witnesses he believed were in the elusive investigation file — including the pilot and an additional witness on the wharf.

The MSONO responded on July 22, 1993 with a letter stating that "copies of the requested records are attached." Smith denies receiving this letter.

Smith's employment suit was dismissed on January 6, 1994.

On April 21, 1995, Smith wrote headquarters stating that to date the only information he was provided by the

Coast Guard was the computer print-out.

On May 2, 1995, two and one-half years after Smith's original request, Angela Marra, Attorney Advisor to the United States Coast Guard, Maintenance and Logistics Command Atlantic, Governors Island, New York, produced the statements of three individuals, including the statements of Jerome J. Dorman, one of the witnesses — Gerald Rex Graham, and the vessel's official log. The Coast Guard did not produce the requested statements of the pilot, J. Kelly Duncan, or the other unnamed witness.

Smith filed the present lawsuit on June 19, 1995.

On July 14, 1995, Coast Guard headquarters released eight more documents to Smith, including the statement J. Kelly Duncan. The Coast Guard still did not produce the statement of the pilot or the second witness, now identified as John L. McElroy.

In December, 1995, Thelma Flood, an FOIA coordinator with the Marine Resource Information Division in Washington, D.C. (MRID) was assigned to conduct a search for the requested records. Her affidavit details the steps she undertook to conduct the search, which included contacting the MSONO. For five months she found no new information. Then, in May, 1996, she found in her desk cabinet at the MRID a file containing sixteen items regarding the allision. These items included witness statements, some of which had been produced previously and some which had not, investigative notes, a drug and alcohol testing report, and an envelope of photographs. Flood testified in deposition that she found the file in the course of moving her office to a new location and that she had not previously discovered it because

her desk cabinet was not a place where such information was likely to be found. She offered no explanation as to how the file came to be in her desk cabinet.

On May 15, 1996, Chief Warrant Officer L. B. Franck telephoned Smith's attorney regarding the newly located information. Based on that discussion, on May 17, 1996 Franck faxed and mailed to Smith's attorney the information found in Flood's desk excluding certain agreed upon material subject to exemption.[1] Among these documents was the long-sought statement of the pilot, Alphonso M. Ajubita, and the statment of John L. McElroy, the second witness.

II. LAW AND ANALYSIS

A. Coast Guards Motion for Summary Judgment

Summary judgment is available to the defendant in an FOIA case where the agency proves that it has fully discharged its obligations under FOIA. *See Weisberg v. United States,* 705 F.2d 1344, 1350 (D.C. Cir. 1983); *Washington Post Co. v. Unted States Dept. of State,* 840 F.2d 26, 29 (D.C. Cir. 1988). An agency's obligation is to make a good faith effort to conduct a search using methods reasonably calculated to produce the information requested. *Cerveny v. CIA,* 445 F.Supp. 772, 775 (D. Colo. 1978).

The agency has the burden of justifying non-disclosure. *United States Dept. of Justice v. Reporters Comm. for Freedom of Press,* 489 U.S. 749, 762, 109 S. Ct. 1468, 1476, 103 L.Ed.2d 774 (1989). In order to sustain this burden, the agency must

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[1] Smith agreed to the deletion of the exempted material.

prove that the requested documents either have been produced, are unidentifiable, are exempt from the Act's inspection requirements, or do not in fact exist. *See Weber v. Coney,* 642 F.2d 91 (5th Cir. 1981); *Lawyer's Comm. for Human Rights v. INS,* 721 F. Supp. 552 (S.D.N.Y. 1989). The underlying facts and the inferences to be drawn from them are construed in the light most favorable to the FOIA requester. *See Miller v. United States Dept. of State,* 779 F.2d 1378, 1382 (8th Cir. 1986).

In this case, there is no issue regarding whether any of the documents were exempt from disclosure. At issue is whether the Coast Guard's search was reasonable, and if not, whether it acted in bad faith. The reasonableness of an agency's search depends on the facts of each case. *See Weisberg,* 705 F.2d at 1350, *Zemansky v. EPA,* 767 F.2d 569 (9th Cir. 1985).

The agency may prove the reasonableness of its search through submission of detailed, non-conclusory affidavits or declarations which identify the documents at issue and explain why the documents were not released. *King v. United States,* 830 F.2d 210, 217 (D.C. Cir. 1987). The affidavits must set out a reasonably detailed and non-conclusory description of the steps the agency took in searching for the requested materials, as well as a general description of the structure of the agency's file system together with an explanation of how all files likely to contain responsive information were searched and how further search would be overly burdensome. *See Oglesby v. United States Dept. of Navy,* 920 F.2d 57, 68 (D.C. Cir. 1990); *Church of Scientology of Cal. v. IRS,* 792 F.2d 146, 151 (D.C. Cir. 1986); *Miller,* 779 F.2d at 1384; *Hayden v. Nat'l Sec. Agency,* 608 F.2d 1381, 1387 (D.C. Cir. 1979), *cert. denied,* 446 U.S. 937, 100 S.Ct. 2156, 64 L.Ed.2d 790 (1980).

The standard of reasonableness does not require absolute exhaustion of the files; instead, it requires a search reasonably calculated to uncover the materials sought. In other words, an agency must make a diligent search for the requested documents in the places in which they might be expected to be found. An "agency cannot limit its search to only one record system if there are others that are likely to turn up the information requested." *Ogelsby,* 920 F.2d at 68.

Once the agency provides such affidavits, the burden shifts to the requester to raise a substantial and material factual issue in regard to the reasonableness of the search. *Miller,* 779 at 1384. This can be done either by contradicting the agency's account of the search procedure or by raising evidence of the agency's bad faith. Therefore, summary judgment in favor of an agency is warranted only if the agency's affidavits are uncontroverted by evidence in the record or by evidence of agency bad faith. *Id.*

The affidavits submitted by the Coast Guard are not sufficient to satisfy its initial burden of proof. The Coast Guard submitted only two affidavits in this case — one from Thelma Flood, the FOIA Coordinator of the MRID at Coast Guard Headquarters, and the other from Chief Warrant Officer L. B. Franck, FOIA Coordinator of the Office of Information Management at Coast Guard Headquarters. Flood first handled Smith's FOIA request in December, 1995, and Franck first received files regarding this FOIA request in April, 1996. Thus, neither Flood nor Franck have any personal knowledge as to the Coast Guard's search efforts during the three-year period following Smith's FOIA request in October, 1992, and consequently, their affidavits do not address what steps were undertaken to search for the information during that three-year period. Instead, their affidavits simply summarize the correspondence between Smith and

the Coast Guard. The affidavits address the details of the search procedures only for the time period of December, 1995 when Flood started her search, until May, 1996. Neither of the affidavits submitted describe the Coast Guard's information storage system, nor explain why all locations likely to contain responsive information were not searched prior to December, 1995.

The affidavits do establish that ultimately, over three years after Smith's initial FOIA request, after Smith's administrative appeal, and after Smith filed his present lawsuit the Coast Guard finally conducted a search reasonably calculated to uncover information requested. The fact of eventual compliance after legal pressure was brought to bear does not validate the Coast Guard's response to Smith's FOIA request. The Coast Guard has offered no explanation for its three-year delay in conducting a reasonable search.

Considering the total failure of the Coast Guard's affidavits to show that it made a reasonable search at any time during the three years following Smith's FOIA request, the court finds as a matter of law that the Coast Guard is not entitled to summary judgment. *See Pollack v. United States Bureau of Prisons*, 879 F.2d 406 (8th Cir. 1989) (finding that agency's affidavits failed to establish the reasonableness of its search). Accordingly, the Coast Guard is not entitled to summary judgment.

B. Smith's Motion for Summary Judgment

Even though the Coast Guard ultimately conducted a search that satisfies the requirements of the FOIA, the uncontroverted evidence establishes that it failed to discharge

its obligations in a reasonable manner. The deposition of testimony of M. E. Schremp, the Chief of the Systems Support Branch at Coast Guard Headquarters, shows that neither she nor anyone else at headquarters made any search for records beyond the MSIS. She did not contact the MSONO even though it was the New Orleans office which conducted the investigation of the allision. She also testified that she made no attempt to forward the request to other departments or branches that might have the information sought. She did not advise Smith that she had not searched for the actual materials he had requested. To the contrary, she advised him, that she had searched "associated files," when in fact she had not. She nevertheless stated to Smith in letters dated June 6 and 10, 1993, that there was no other information regarding the allision besides the computed print out. Schremp's testimony is uncontroverted.

In addition, the affidavits, together with the correspondence between Smith and the Coast Guard, show that the Coast Guard did not produce any material in response to Smith's FOIA request for six months. At that point, the Coast Guard produced only a computed printout which Smith had not requested. The Coast Guard's response made no mention of the actual material Smith had requested.

Even though Smith's request for records was narrow in scope and time, it took over three years before Smith received all of the particular witness statements he had requested. Until December, 1995, when Flood was assigned to search for information, no one at headquarters searched for the requested material in any location other than the MSIS.

Smith has shown that reasonable search procedures

were available which were not used. The Coast Guard completely denied the existence of information without looking in the places where such information would have been likely to be found, and where it was later found to exist. Considering the long-delayed and erratic responses to Smith's many requests, it is clear that the Coast Guard's conduct in this matter has been less than exemplary. The Coast Guard's behavior falls short of the spirit of the Department of Transportation's policy of "mak[ing] records available . . . promptly" and "to the greatest extent possible." 49 C.F.R. § 7.1 et seq. Thus, Smith is entitled to summary judgment finding that the Coast Guard failed to satisfy its obligation under the FOIA.

While the evidence shows that the search was not reasonable, it does not establish bad faith. *See Miller,* 779 F.2d at 1386. *See also Goland v. CIA,* 607 F.2d 339, 367, 370 (D.C. Cir. 1979). To prove bad faith a plaintiff must show that the government purposefully witheld documents, not that it merely delayed or was inefficient in producing them. *See Simon v. United States,* 587 F.Supp. 1029, 1032 (D.C. Cir.*1984); Republic of New Afrika v. FBI,* 645 F.Supp. 117, 122 (D.D.C. 1986). Considering the ultimate disclosure of all the documents specifically requested by Smith, and the lack of any evidence to show that the Coast Guard purposefully withheld the documents, this court finds as a matter of law that the Coast Guard has not acted in bad faith. *Miller,* 779 F.2d at 1386.

C. Smith's Request for Order Compelling Production

Smith seeks an order compelling production of documents and a judgment in his favor on the issue of "liabil-

ity." The FOIA does not provide a private action for money damages against an agency or its personnel. *See Daniel v. St. Louis VA. Regional Office,* 561 F.Supp. 250, 251 (E.D. Mo. 1983). The FOIA does provide remedies for violation of its provisions. Sections 552 (a) (4) (B) and (E) provide authority for district courts to act on complaints by (1) enjoining the agency from withholding agency records; (2) ordering production of such records; (3) assess against the United States reasonable attorney fees and other litigation costs.[2]

In this case, the Coast Guard did not release for many years several documents which Smith had specifically identified. It now appears that all of the requested documents have been forwarded to Smith. Smith alleges that there "may be other information" that has not been produced. Although Smith's belief that further documents may exist is certainly understandable, that belief alone is not sufficient to overcome Flood's affidavit and testimony regarding the search she undertook in December, 1995. *Miller,* 779 F.2d at 1386. Her affidavit states that she searched the Office of Chief Counsel, the Marine Investigation Office, the MRID, the MSIS, and the MSONO. She conducted her search over a three-month period. Her affidavit explained that she searched in all likely locations. That she was unable to locate any more documents, including those which she later found in her desk cabinet, does not render her search unreasonable.

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[2] In addition, secton 552(a) (4) (F) provides that if the court finds that the circumstances surrounding the withholding raise questions whether agency personnel acted arbitrarily or capriciously, "the Special Counsel shall promptly initiate a proceeding to determine whether disciplinary action is warranted against the officer or employee who was primarily responsible for the withholding," and if such action is recommended, then the administrative authority is required to take corrective action.

Flood testified in deposition that she did not search her own desk because relevant documents were not likely to be located there. While it seems unobservant to overlook a file of documents within inches of one's desk, Smith has not offered any evidence to controvert Flood's affidavit. Smith has not suggested that other likely locations remain to be searched. There is no evidence that the Coast Guard is withholding any information other than the information that counsel agreed was exempt from disclosure. Accordingly, the court finds that an order compelling production is not warranted.

D. Smith's Request for Attorney Fees

Congress amended the FOIA in 1974 to authorize the award of attorney fees to parties who have "substantially prevailed." 5 U.S.C. § 552 (a) (4) (E).[3] A court order compelling disclosure is not necessary in order to have prevailed. Where, as here, there has been no court order compelling disclosure, the plaintiff may still establish that he substantially prevailed if he shows, first, that prosecution of the action was reasonably necessary to obtain the information; and second, that the existence of the lawsuit had a causative effect on the release of the information. *Lovell v. Alderete,* 630 F.2d 428, 432 (5th Cir. 1980); *Miller,* 779 F.2d at 1389.

The facts herein show that Smith was required to file this suit to obtain the information he requested. Considering

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[3] 5 U.S.C. § 552 (a) (4) (E) reads as follows:

> The court may assess against the United States reasonable attorney fees and other litigation costs reasonably incurred in any case under this section in which the complainant has substantialy prevailed.

the circumstances of this case, a reasonable person in Smith's position would have found it necessary to file a lawsuit. The record reflects that after June, 1993, the Coast Guard had discontinued processing the FOIA request. Further requests on Smith's part without the aid of litigation would not have produced the information he ultimately received. Smith was confronted by a situation where he had to either accept the Coast Guard's determination that it had no other information, or take action to compel the Coast Guard to search beyond the MSIS.

The facts also show that Smith's persistent litigation of his FOIA claim was the principal cause of the Coast Guard's eventual compliance with its FOIA obligations and release of all documents requested. The United States has not suggested that the documents were released in due course as part of an ongoing FOIA request process. Indeed, the record shows that the Coast Guard considered its search concluded in June, 1993. The court finds therefore that without Smith having pursued litigation, the Coast Guard would not have made any further production. Accordingly, Smith is eligible for attorney fees.

Once a plaintiff has shown himself eligible for attorney fees, the court must determine whether he is entitled to such an award. *Church of Scientology*, 653 F.2d at 587. There are four criteria to assist the court in exercising its discretion as to the award of attorney fees under the FOIA: "Among the factors which the court should consider when determining a prevailing litigant's entitlement to attorney fees under FOIA are: (1) the benefit to the public to be derived from the case; (2) commercial benefit to the complainant, (3) the nature of the complainant's interest in the records he seeks; and

(4) whether the government's withholding of the records had reasonable basis in law." *See LaSalle Extension Univ.*, 627 F.2d at 485; *Chivilis v. SEC*, 673 F.2d 1205, 1212 n. 16 (11th Cir. 1982).

The FOIA was enacted to provide information to the public rather than private litigants. In this case, Smith sought the documents at issue for his own personal benefit to clear himself of fault in the allision and to benefit himself financially in the litigation he brought against his employer. Smith's interest in these records is purely personal.

This is not a case where the agency has purposefully withheld documents from disclosure. The documents were not being withheld for any legal reason. Thus, there is no reason to scrutinize the legal basis under which the documents were withheld. The question is whether the government engaged in bad faith or obdurate behavior "merely to avoid embarrassment or to frustrate the requester." *See Frydman v. Dept. of Justice*, 852 F.Supp. 1497, 1508 (D. Kan. 1994), *aff'd*, 57 F.3d 1080 (10th Cir. 1995) (10-month delay does not show bad faith); *LaSalle Extension Univ. v. FTC*, 627 F.2d 481, 484 (D.C. Cir. 198) (quoting S.Rep. No. 854, 93d Cong., 2d Sess. 19 (1974)).

Smith's main argument in this respect is the long delay in light of the limited nature of his FOIA request. It is a serious liability to the government's position that it has offered no explanation for its gross noncompliance with the FOIA. The government did not act with due diligence, and has offered no reason to find that the delay was "unavoidable." Nevertheless, Smith has pointed to nothing that would support an affirmative finding of bad faith or

obdurate behavior on the part of the Coast Guard. The evidence in this case is that the Coast Guard's noncompliance was due to administrative ineptitude rather than any unwillingness to comply with Smith's FOIA request. Indeed, the fact that the Coast Guard immediately produced the information contained in the file discovered by Flood in May, 1996 indicates a good faith desire to satisfy Smith's request.

Smith has substantially prevailed in his objective of acquiring documents which were the subject of his FOIA request. His prosecution of this suit enabled him to ultimately obtain those documents. Therefore, Smith is eligible for an award of attorney fees. However, after applying the four criteria, the court finds that he has not shown entitlement to an award of attorney fees. An award would neither benefit the public nor serve as a deterrent to agency obduracy.

Accordingly,

IT IS ORDERED THAT:

(1) The United States' Motion for Summary Judgment is **DENIED**, and the plaintiff's Motion for Summary Judgment is **GRANTED IN PART** finding that the United States Coast Guard failed to satisfy its obligations under the Freedom of Information Act. Plaintiff's request for an order compelling production of documents and for attorney fees is **DENIED.**

(2) The clerk shall enter judgment herein in favor of the plaintiff and against the defendant.

New Orleans, Louisiana this 27th day of November, 1996.

/s/ Henry A. Mentz

UNITED STATES DISTRICT JUDGE

APPENDIX E

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STUART H. SMITH, JR.	CIVIL ACTION
VERSUS	NO. 95-1950
UNITED STATES OF AMERICA	SECTION: "I" (1)

FILED
DEC 4 '96

JUDGMENT

This matter was brought before the court on cross-motions for summary judgment. In accordance with the Order and Reasons dated November 27th, 1996.

IT IS ORDERED, ADJUDGED, and DECREED that judgment is entered in favor of plaintiff Stuart H. Smith, Jr. and against defendant United States of America.

New Orleans, Louisiana this 3rd day of December, 1996.

/s/ Henry A. Mentz
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY Dec 04 1996

PLAINTIFF'S EXHIBIT
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APPENDIX F

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF LOUISIANA

STUART H. SMITH, JR.	**CIVIL ACTION**
VERSUS	**NO. 95-1950**
UNITED STATES OF AMERICA	**SECTION: "I" (3)**

FILED
FEB 5 '97

ORDER

Having considered the parties' briefs on the plaintiff's motion for rehearing.

IT IS ORDERED that Plaintiff's Motion for Rehearing is DENIED.

New Orleans, Louisiana this 5th day of February, 1997.

/s/ Henry A. Mentz
UNITED STATES DISTRICT JUDGE

DATE OF ENTRY FEB 06 1997

PLAINTIFF'S EXHIBIT
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APPENDIX G

IN THE UNITED STATES
DISTRICT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-30184
USDC No. 95-CV-1950
Summary Calendar

FILED
SEP 12 1997

STUART H. SMITH, JR.

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana

Before WIENER, BARKSDALE and EMILIO M. GARZA, Circuit Judges.*

PLAINTIFF'S EXHIBIT
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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

Stuart H. Smith, Jr., appeals the district court's dismissal of his claim under the Federal Tort Claims Act for lack of subject matter jurisdiction. Smith also appeals the denial of attorney fees following a partial summary judgment in his favor under the Freedom of Information Act and he argues that the district court should have ordered the United States Coast Guard to produce the "entire file" related to its investigation of a marine accident in which Smith was involved. We have reviewed the record and the briefs of the parties and AFFIRM for essentially the same reasons set forth by the district court. *Smith v. United States,* No. CA 95-1950 (E.D. La. October 6, 1995;

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November 14, 1995; and December 4, 1996). Smith's request for discovery and production of documents is DENIED.

AFFIRMED; MOTION FOR DISCOVERY AND PRODUCTION OF DOCUMENTS DENIED.